the slope at the common boundary between the front lot and the subject property.

(b) Most of the sites at Cairnhill Road and Peck Hay Road are hilly and most of the high rise development would require some form of retaining walls.

(c) It is possible to have a high rise development designed in such a way as not to interfere too much with the existing natural slope.

(d) Lastly, at the material time i.e. April 4, 1973, it was a sellers' market and in any negotiation it would be difficult for a purchaser to succeed in obtaining any substantial reduction to take account of the disadvantageous physical features.

Hence in his view a reasonable deduction from the price of $41 per sq. ft. to take account of the steep slope at the rear and other minor differences in physical features like the cost of diverting earth drains and constructing any other low retaining walls would be 10% of the said value or $60,990. In view of all these factors which have been considered by the deputy chief valuer, we can find no basis for increasing this percentage of discount.

Aside from the disadvantages present in the subject property discussed above, it should also be borne in mind that there is a great deal of similarities between the subject property and the front lot. As Mrs. Hangchi rightly pointed out, both are situated at Peck Hay Road in the same class of residential area where high density is permitted, are of the same size approximately, have fairly steep slopes, sloping upwards from Peck Hay Road and hilly terrain, are four-sided in shape but slightly irregular, have the same maximum density of 150 persons per acre and had the same development potential for development in April 1973.

Having regard to all the evidence adduced, there is in our judgment no justification for disturbing the valuation of the subject property made by the Deputy Chief Valuer, and accordingly, his valuation is confirmed.

Order accordingly.

Solicitors: *Rodyk & Davidson.*

RAM GOSWAMI v. PUBLIC PROSECUTOR

[A.C.J. (Wee Chong Jin C.J.) October 25, 1984]
[Singapore – Magistrate's Appeal No. 106 of 1983]

Legal Profession – Contempt of court – Counsel applied to court for discharge when clients failed to pay fees – Whether counsel's refusal to continue with case amounted to contempt.

The appellant, an advocate and solicitor was convicted for contempt in the face of the court by a District Court under section 8 of the Subordinate Courts Act and sentenced to a fine of $500/-.

The facts were briefly as follows. The appellant had agreed to represent two persons who were charged with an offence under the Women's Charter before a District Court. The oral contract was for payment of a retainer by each client which was to be paid before the trial commenced and a refresher for each day or part thereof after the first day. The trial commenced on March 3, 1983. Only part of the agreed retainer had been paid by his clients despite repeated promises. The appellant subsequently applied for a week's adjournment or alternatively for a discharge. The appellant informed the court that his clients had failed to give him instructions since the last hearing and had failed to pay the agreed fees despite repeated promises to do so. The trial judge refused his application and found him in contempt of court and asked him to show cause. The appellant reiterated his grounds for applying for his discharge and apologised to the court.

The question before the present court was whether the appellant's conduct or act could properly be regarded as a contempt of court.

Held, allowing the appeal: (1) the appellant's conduct did not go so far beyond the limits of non-co-operation or refusal to comply with the court's direction or discourtesy as to harden into contempt of court;

(2) having regard to all the circumstances of the case, the power of summary punishment given to the judge under section 8 of the Subordinate Court's Act should not have been exercised when the appellant apologised for his conduct.

Cases referred to:

(1) *Parashuram Detaram Shamdasani* v. *King Emperor* [1945] A.C. 264.
(2) *Joseph Orakwue Izuora* v. *The Queen* [1953] A.C. 327.
(3) *Weston* v. *Central Criminal Court, Courts Administrator* [1977] Q.B. 32, 46.
(4) *Balogh* v. *St. Albans Crown Court* [1975] Q.B. 73, 85.

MAGISTRATE'S APPEAL.

J. Grimberg for the appellant.
T.Q. Lim (Amicus Curiae).

Loke Yoon Kee (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: The appellant is an advocate and solicitor. He was convicted by a District Court under section 8 of the Subordinate Courts Act and sentenced to a fine of $500/-. He now appeals against the conviction and sentence. The circumstances which resulted in his conviction for contempt in the face of the Court can be briefly stated.

The appellant had agreed to represent two persons who were charged with an offence under the Women's Charter before a District Court. The oral contract was for payment of a retainer by each client which was to be paid before the trial commenced and a refresher for each day or part thereof after the first day. The trial commenced on March 3, 1983 but could not be concluded on that day and was adjourned to April 14, for further hearing. The clients on March 3, 1983 had paid only part of the agreed retainer.

Before the trial resumed on April 14, the appellant, his retainer and refresher still outstanding, was prevailed upon to continue to represent the clients upon their undertaking to make further payments. The trial could not be concluded on April 14 and was adjourned for further hearing on May 12 and 13, 1983. When the trial resumed on May 12 the fees had not been fully paid but the appellant again agreed to continue to represent them on their promises to make further payment.

At the close of the day's proceedings on May 13, 1983 the prosecution having closed its case the appellant made a submission of no case to answer. The court decided to take time to consider the submission and adjourned the trial to June 25, 1983. The appellant on that day informed his clients that if the balance of the agreed retainer and refreshers were not paid before June 25, 1983 he would apply to court on that day for his discharge and asked for further instructions in case they were called on to make their defences.

A few days before June 25, 1983 the appellant tried in vain to contact the clients and he next saw them in court on the morning of June 25 when they told him they were unable to make any payment. Thereupon he informed them that if their defences were called on he would apply to be discharged. When the trial resumed the judge called on both accused to enter on their defences whereupon the appellant applied for an adjournment, or failing that, his discharge.

In support of this application the appellant informed the court that his clients had failed to give him instructions since the last hearing and had failed to pay the agreed fees despite repeated promises to do so. The court was told by the accused that they had no money but would try to save money by the following week. The court then granted a short adjournment for the appellant to confer with his clients. After discussion with his clients the appellant saw the judge in his Chambers. He informed the judge that he was unable to carry on that day and would be asking for a week's adjournment to take instructions and to recover his unpaid fees. He told the judge that if no adjournment was granted he would apply for his discharge.

The judge intimated that he was not inclined to accede to the intended application and if the appellant did not carry on if his application was refused he would be reported to the Law Society. When the court resumed the appellant formally applied for a week's adjournment or alternatively for a discharge. The application was refused by the judge who said:—

> "I am directing you counsel to carry on with the matter as you were the counsel on record and had carried on the trial till today. In respect of your fees you have and could resort to the remedies available to you."

The appellant declined to carry on and again gave his reasons. The judge said:—

> "By your refusal to carry on you are disrupting the proceedings and this is conduct prejudicial to your clients. I am taking cognizance of this contemptuous act committed in the face of this Court – an offence under Section 8 of the Subordinate Courts Act Cap 14 (read). I am asking you to show cause now."

In response to the show cause order the appellant reiterated the grounds for applying for his discharge and submitted that he was not disrupting the proceedings and asked for time to look up the law of contempt and was granted a short adjournment of thirty minutes. Ten minutes after it adjourned the court resumed and in the presence of the appellant the judge pronounced his decision in these words:—

"Contempt is a question of fact not of law. I find that cause is not shown. I find you guilty of contempt and accordingly you are convicted."

In mitigation the appellant apologised to the court but was fined $500/- which he paid.

The contempt in the face of the court alleged against the appellant was that he had disrupted the proceedings in the court by refusing to carry on representing the accused at the trial when directed to do so by the court. The question was whether the appellant's conduct or act could properly be regarded as a contempt of court. The principle to be applied was laid down by the Privy Council in *Parashuram Detaram Shamdasani* v. *King Emperor*[1] . Lord Goddard who delivered the judgment said at page 268:—

"The principle to be applied is clear enough. For words or action used in the face of the court, or in the course of proceedings, . . . to be a contempt, they must be such as would interfere or tend to interfere with the course of justice. No further definition can be attempted."

What were the consequences of the appellant's refusal to carry on? On the facts the proceedings could not continue unless the accused were willing to conduct their own defences. We will never know whether they were willing to do so as the judge did not ask them. Assuming that they were not willing and the judge had to adjourn the proceedings to enable them to engage another advocate and solicitor to represent them, would an adjournment so disrupt the trial as to amount to an interference with the course of justice? It is submitted on behalf of the appellant that his conduct could not and did not amount to contempt and reliance is placed on the case of *Joseph Orakwue Izuora* v. *The Queen*[2] . The facts appear in the headnote which reads:—

"The appellant, a barrister practising in Nigeria, at the conclusion of the hearing of a divorce case in which he had represented the respondent in those proceedings, and in which judgment was reserved until the following day, applied that he might be excused from attendance on the next day. His application was granted. Counsel for the petitioner then asked that he also might be excused, and thereupon the judge, stating that the court could not carry on in the absence of counsel for both parties, withdrew the appellant's permission and directed that both counsel should attend next day. At the sitting of the court on the following day the appellant was absent and no communication from him had been received by the court. The appellant having been summoned to show cause why he should not be committed for contempt of court, the judge held that his absence from the court without leave amounted to a contempt and fined him £10 and ordered that in default he should be imprisoned for two months."

The Privy Council held that the appellant was not guilty of contempt because the conduct complained of was not capable in law of amounting to contempt of court, even though such conduct was clearly discourteous and may have been in dereliction of his duty to his client and may have been in breach of a rule of court (Order 16 Rule 11) which provides that "every barrister or solicitor who shall be engaged in any case shall be bound to conduct the same on behalf of the plaintiff or defendant, as the case may be, for whom he shall have been engaged, until final judgement, unless allowed by the court for any special reason to cease from acting therein;"

Lord Tucker, who delivered the judgment of the Privy Council, said at page 336:—

"It is not possible to particularize the acts which can or cannot constitute contempt in the face of the court, but in this connexion it is desirable to bear in mind what was said in the judgment of the Board delivered by Lord Goddard in *Parashuram Detaram Shamdasani* v. *King-Emperor*, where these words are to be found:— 'Their Lordships would once again emphasize what has often been said before, that this summary power of punishing for contempt should be used sparingly and only in serious cases. It is a power which a court must of necessity possess; its usefulness depends on the wisdom and restraint with which it is exercised, and to use it to suppress methods of advocacy which are merely offensive is to use it for a purpose for which it was never intended.'

It is not every act of discourtesy to the court by counsel that amounts to contempt, nor is conduct which involves a breach by counsel of his duty to his client necessarily in this category. In the present case the appellant's conduct was clearly discourteous, it may have been in breach of Rule 11 of Ord. 16, and it may, perhaps, have been in dereliction of his duty to his client, but in their Lordships' opinion it cannot properly be placed over the line that divides mere discourtesy from contempt."

Applying these principles here did the refusal of the appellant to carry on at the continued trial amount to a contempt in the face of the court such as to be punishable summarily under section 8 of the Subordinate Courts Act? On this question the observations of Stephenson L.J. in *Weston* v. *Central Criminal Court, Courts Administrator*[3] are of assistance. The passage reads:—

"I stand by all I said in *Balogh's* case [1975] Q.B. 73, 90 about the sparing use of this extreme remedy and the need to resort to it only when necessary, and then under stringent conditions. But I need not decide the question whether summary procedure was necessary, or rightly conducted, in this case, because (as I have said) I am not satisfied that the appellant was in contempt. It is of course vitally important for the administration of justice that solicitors, no less than counsel, should assist the court by

co-operating with its administrators and complying with the court's directions, whether they come from the judge as a request for help or as orders to be obeyed. Nowhere is co-operation more important than at the Central Criminal Court, where the enormous number of courts and cases presents special difficulties, and demands the maximum of mutual trust and goodwill if justice to all is to be done fairly and quickly.

But not every failure to co-operate, or refusal to assist the court, is a contempt, and not every dereliction of duty or discourtesy to the court is a contempt, as was laid down in *Izuora's* case [1953] A.C. 327, to which Lord Denning M.R. has referred; and although I sympathise with the judge in regarding the appellant as contumacious, I do not think that the appellant's conduct went so far beyond the limits of non-co-operation or discourtesy as to harden into contempt of court. Moreover, I suspect that if the judge had *Izuora's* case cited to him, or had received from the appellant an apology for not attending when directed, the judge might not have made the order which is the subject of this appeal."

In the present case, I am satisfied that the appellant's conduct did not go so far beyond the limits of non-co-operation or refusal to comply with the court's direction or discourtesy as to harden into contempt of court. On the facts and in all the circumstances it cannot be said that the appellant's conduct was done with intent to delay or hinder the trial of the accused. In my view, having regard to all the circumstances of the case, the power of summary punishment given to the judge under section 8 of the Subordinate Court's Act should not have been exercised when the appellant apologised for his conduct.

The course of justice is best served if, whenever an occasion arises for a court to consider exercising its powers under section 8, to bear in mind a passage in the judgment of Lord Denning M.R. in *Balogh* v. *St. Albans Crown Court*[4] which reads:—

"This power of summary punishment is a great power, but it is a necessary power. It is given so as to maintain the dignity and authority of the court and to ensure a fair trial. It is to be exercised by the judge of his own motion only when it is urgent and imperative to act immediately — so as to maintain the authority of the court — to prevent disorder — to enable witnesses to be free from fear — and jurors from being improperly influenced — and the like . . . The reason is so that (the judge) should not appear to be both prosecutor and judge; for that is a role which does not become him well."

For these reasons, the appeal is allowed. The conviction must be set aside and the fine refunded.

Appeal allowed.

Solicitors: *Drew & Napier; T.Q. Lim & Co.*

MALAYSIAN REPORTS

K. UMAR KANDHA RAJAH v. E. L. MAGNESS

[F.C. (Salleh Abas C.J. (Malaya), Abdul Hamid and Syed Agil Barakbah F.JJ.), November 16, 1983 & April 30, 1984]
[Kuala Lumpur — Federal Court Civil Appeal No. 103 of 1983]

Contract — Sale of land — Condition precedent that title deed be handed to purchaser before payment of purchase price — Waived — Forfeiture of deposit — Whether unconscionable.

In this case the appellant claimed specific performance of an agreement for the purchase of land from the respondent. The respondent had agreed to sell his share in 10 lots of land out of 13 lots owned by him. The purchase price was to be paid by instalments but it was agreed that the purchaser should retain the title deeds before the purchase price was paid in full in order to enable him to arrange for the subdivision and development of the land. The appellant paid the first instalment of the purchase price and the mortgage on the land was discharged but the title deeds were not handed by the respondent to the appellant. As a result the appellant refused to pay the second instalment when it was due. Subsequently however he paid two sums of $1000/- to the respondent. The respondent demanded payment of the balance of the second instalment and when he received no reply, he served a notice terminating the agreement and forfeiting the sum of $5000/- deposit. The respondent returned the balance of $7500/- by cheque to the appellant less the sum forfeited but this was returned by the appellant, who denied any breach of the agreement and gave the respondent notice to fulfil his obligations under the agreement. Eventually the appellant brought the action for specific performance against the respondent. There were two main issues in the case —

(1) whether there was a condition precedent requiring the respondent to hand over the title deeds to be retained by the appellant prior to the payment of the second and third instalments;

(2) whether the appellant had waived such condition by making the two payments of $1000/- each towards the second instalment.

The learned trial judge held that there was such a condition precedent but it had been waived by the appellant. The appellant did not pay the balance of the second instalment and therefore his application for specific performance was dismissed. The appellant appealed.

Held: (1) the handing over of the title deeds to the appellant for his retention was a condition precedent to the payment by the appellant of the second instalment but in the circumstances the payment of the two sums of $1000/- towards the second instalment amounted to a waiver of his right to retain the title deed;

(2) the appellant had failed and refused to pay the balance of the second instalment even after the expiration